

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

**SMORACY, L.L.C.,
et al.,**

Plaintiffs,

CIVIL ACTION NO. 06-CV-15507-DT

VS.

DISTRICT JUDGE GEORGE CARAM STEEH

PLANA, INC., et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER

This matter comes before the Court on Defendants' Motion for Protective Order filed on June 8, 2007. (Docket no. 11). The Court ordered expedited briefing, and Plaintiffs filed a Response brief on June 15, 2007. (Docket no. 14). The motion has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 12). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). The motion is now ready for ruling.

Plaintiffs allege that Defendants have violated their patent on a part for recycling machines. On May 29, 2007 Plaintiffs noticed the deposition of Defendant Plana, Inc. scheduled for June 28, 2007.¹ (Docket no. 11 at 3). Counsel for Plaintiffs states that this date was chosen because this was the date Judge Steeh selected for a scheduling conference in the case after counsel had agreed to be available on this date. (Docket no. 14 at 4). On June 5, 2007 Defendants' counsel contacted Plaintiffs' counsel seeking to postpone Defendant Plana's deposition and the scheduling conference set for June 28 because of the vacation plans of Defendants' counsel which will make him unavailable from June 23 through July 9, 2007. The parties agreed to reschedule the scheduling conference before Judge Steeh

¹ Plaintiffs allege that they served the notice on Defendants' counsel on May 22, 2007.

for July 12, 2007. However, the parties could not agree on rescheduling the deposition of Defendant Plana.

Defendants' counsel has now moved for a protective order that no deposition be taken in this case during the period of June 23 through July 9, 2007. Plaintiffs oppose the motion on several grounds. They contend that the date was chosen in good faith based on the representation of counsel for Defendant to Judge Steeh regarding counsel's availability on that date. Plaintiffs also present letters tending to show that Defendants have not been diligent in responding timely to Plaintiffs' discovery requests. Plaintiffs also point out that Defendants have not shown that another attorney in the same firm as Defendants' counsel could not stand in for him during the deposition. Finally, Plaintiffs argue that they offered to agree to postpone the deposition at issue if Defendants stipulated that their responses to Plaintiffs' Second Request for the Production of Documents and Things would be as comprehensive as Defendants' counsel had previously stated. Defendants rejected this offer.

Rule 26(c), Fed. R. Civ. P., allows the Court to enter a protective order "for good cause shown" to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including that discovery be taken at designated times.

The Court normally expects counsel to be able to work out deposition dates for times other than when opposing counsel has vacation plans. Based on the allegations in the parties' briefs, and especially in Plaintiffs' brief, this may not be the ordinary case. However, the Court finds that good cause exists to postpone Plaintiffs' deposition of Defendant Plana, Inc. until after the vacation of counsel for Defendant. Accordingly, Plaintiffs' counsel will re-notice the deposition of Defendant Plana, Inc. for either July 10 or 11, 2007. This will be after the vacation dates of Defendant's counsel but before the next scheduling conference before Judge Steeh. Defendants may not seek to postpone or delay this deposition. The failure of Defendant Plana, Inc. to appear under Fed. R. Civ. P. 30(b)(6) at this time

and be deposed will result in sanctions being awarded to Plaintiffs. Plaintiffs are reminded of the availability of subpoenas to compel the attendance of witnesses pursuant to Fed. R. Civ. P. 45.² The Court at this time will not impose any sanctions.

IT IS THEREFORE ORDERED that Defendants' Motion for Protective Order (docket no. 11) be **GRANTED** to the extent that Plaintiffs will re-notice the deposition of Defendant Plana, Inc. for either July 10 or 11, 2007.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: June 18, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: June 18, 2007

s/ Lisa C. Bartlett
Courtroom Deputy

² Plaintiffs suggest that the individual Defendant, Mr. Schulz, is unwilling to attend his deposition. (Docket no. 14, ex.2).